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HONOLULU, HAWAII TERRITORY, TUESDAY, AUGUST 5, 1902.

PRICE FIVE CENTS.

FIRE FEES IN COURT

**Gear Again Says
They Are Not
Legal.**

**INTIMATES THAT
ACT WAS INVALID**

**Court Says That Governor Should
Have Called Special Session
to Raise \$1,000.**

THE application of Mrs. H. Luning for mandamus to compel the Fire Commission to issue to her a certificate of award without the payment of the usual fee was argued and submitted to Judge Gear yesterday afternoon. The court will render its decision tomorrow morning, though Gear announced several times during the course of the argument that he would declare illegal the act of the commission in charging fees. Attorneys and court were periously close on several occasions to going into the legality of the act creating the fire court, but each time the matter was safely passed, though it seemed to be the general opinion, that the legislature did not have the powers to create such a court as it did. Attorney General Dole who appeared for the Fire Commission contended that the circuit court had no jurisdiction over the fire court which is a separate and distinct body, whose acts are not subject to review.

There were present in the court room when the case was called, Chairman Macfarlane, Commissioner Lovelock and Clerk Riggs of the Commission, Auditor Austin and Treasurer Wright, who had been called as witnesses.

J. M. Riggs was first put on the stand and admitted in response to questions from Attorney Peters, that he had refused to give Mrs. Luning a certificate of award until she had paid the required fee of four dollars. He testified further that he had received for extra work in making out certificates the sum of \$375. The total amount collected in fees was \$5,077.25 which had been deposited in the Bank of Hawaii to the credit of the chairman. He testified further that the idea of giving certificates had originated with himself, aided by the suggestion of Secretary Poon of the Chinese Consul's staff, who said that the Chinese claimants would require something to show for their awards. Mr. Riggs also read the minutes of the meetings of the Commission, where it had been decided to give certificates and that fees should be charged.

Auditor Austin who was next called, said he had been in consultation with members of the fire commission and stated to them what form of certificate he would accept. He said he did not believe the certificate to be necessary as the record of judgment is sufficient for the issuance of the warrants by him. The certificate of award, as he understood, is to facilitate the work of the commission and the claimant in securing his money.

Treasurer Wright was called, but not allowed to testify, he simply being asked as to what part he took in the discussion of the certificates. The court ruled that it was his duty to pay the awards upon presentation of the warrant, and consequently had nothing to do with the certificates.

F. W. Macfarlane, chairman of the Commission, testified as to how they had come to charge the fees. He said that when it was seen that the work of the court must stop for lack of funds, the commissioners had interviewed the governor, who advised the borrowing of the money, with a recommendation by him that the next legislature repay it. Judge Gear interrupted the witness to say that the governor's suggestion was good law, and should have been followed. Mr. Macfarlane continued, that it was then decided to borrow \$4,000, the amount required, and the advance had been obtained from sixteen merchants, the agreement being that the legislature should be asked to repay them. Afterwards by reason of the numerous mistakes found in the claims, it was seen that the work of the court would extend over an even greater period than anticipated, and then it was decided to make up the balance and reimburse the merchants at the same time by the charge of fees. These were fixed on an estimate made by the clerk so that all expenses would be covered. When everything is paid which is owing by the commission,

there will still be a balance of \$100, which is to be paid into the Treasury. Mr. Macfarlane stated also, that it had been the wish of both the Chinese and Japanese claimants that awards be made by certificate, and that the Attorney General had been consulted before the fee system was decided upon.

Mr. Dole then presented his argument, contending that the Fire Commission was a court of limited and special jurisdiction, which under the statute, was free to act as it chose, and it was not within the power of the circuit court to overrule its actions, nor has it jurisdiction over it. Second, this special court is exempt from the rules of common law, and was only required to enter its decisions in a record of judgment; this done its statutory duties are ended. To go further and to issue certificates was an extra-judicial act for the convenience of the claimants.

"If the act of the legislature is constitutional, then this court has no jurisdiction; the judgment is final," added Mr. Dole.

"You don't want me to go into the constitutionality of the question do you?" asked the court.

"It is immaterial to me." "We can't have two Supreme Courts," said the Judge; "this action of the legislature was in violation of the organic act; the legislature has only power to create courts of inferior jurisdiction. But then this question is not before us."

Attorney Peters contended that the commission had clearly exceeded its jurisdiction in charging a fee, which by the evidence was in reality not a fee, but a charge for the payment of back loans.

Mr. Dole replied that it was a matter of expediency, of public policy; that under the section giving the commission the right to make rules and regulations for its guidance, the charge could be made.

"This is not a court of expediency or policy," said Judge Gear, "it is dealing simply with questions of legality; if the commission had a right to charge these fees, then that ends it. It seems to me though, that the governor was pretty nearly correct, when he said that the commission should borrow the money and ask the legislature to appropriate it back. The rule made by this court, if legal, has the force of a statute."

Mr. Magoon characterized the action of the commission as a "holdup" and said that the claimants had been compelled to buy the certificates or else not get their awards. The Attorney General replied that the claimants could have rested on the record of judgment, but that it would have taken longer, the certificates being simply for the convenience of the claimants. They could take the certificates or leave them as they saw fit.

Judge Gear stated that the legislature had appropriated \$17,000 for the expenses of the commission which had been insufficient, and while it was right for public spirited citizens to advance money to finish the work, the court should have asked the legislature to appropriate the required money. He did not wish to criticize the fire commissioners for their action and thought that they had done everything in their power to serve the best interests of the community. "The proper thing would have been for the governor to have called a special session," concluded the court.

"That would hardly have paid, just to borrow \$1,000," returned the Attorney General.

"That's what should have been done," replied the court.

"And spend \$100,000 to get one thousand dollars," added Mr. Dole.

"That would have been the only legal way of doing," concluded the court.

Judge Gear announced that he would render his decision Wednesday morning at 10 o'clock.

CUPID WILL MAKE TOUR.

Expects to Leave for Maui and Hawaii This Week.

Upon the verdict of the executive committee of the Hui Kuokoia at its meeting tomorrow will rest the progress which will be made in pushing organization work on the lines of the other parties. The meeting of Wednesday will be the last before the departure of Prince Cupid for the other islands, where he will meet many of the friends of the hui, who are seeking information concerning the workings of the new organization, and who will without doubt take up the propaganda.

Cupid will go to Maui in the Mauna Loa on Friday and will be at Walluku during the races. This time seems propitious as the most of the men who have signified a desire to hear of the new party will be at the race meeting, and they will thus have the opportunity to meet the leader and he will be given the chance to look into the situation as affecting the voters and their feeling toward the old leaders. At present Prince Cupid expects to make the trip alone, but there is feeling among the members of the executive committee that there should be a committee accompany the leader on the trip, so that the work of spreading the organization may go forward.

Prince Cupid has now received letters calling for his presence at many points on Hawaii and he will extend his trip so as to include Hilo, Kohala, Waimea and the intermediate points. This trip may extend to September 1st, and in the meantime the organization of the party here will be put under way.

The proclamation of the party is now ready for sending out and it is probable that there will be no time lost in having the various islands put under the charge of some follower of the hui, so that there may be a complete organization effected very soon.

REPUBLICANS CALL FOR A CONVENTION

**The Territorial Nominations Will Be
Made at Progress Hall
Labor Day.**

**District Committees to Meet for Organization
Friday Night and the Forces Already
Are Being Aligned.**

REPUBLICANS will get busy at once, since the primaries have been held and the men who will have the nomination of candidates chosen, and the calls for the Republican Territorial Convention are now out. The date has been known but the formal call is now issued and the preparations will go forward.

The convention will be held Monday September 1st, at Progress Hall. This date will give to the out of town delegates an opportunity to take part in the deliberations of the convention and return to their homes in the steamers which leave the next day. Should the convention be prolonged there may be some arrangement which will keep them until later in the day and thus prevent the necessity for any one staying over until the following week.

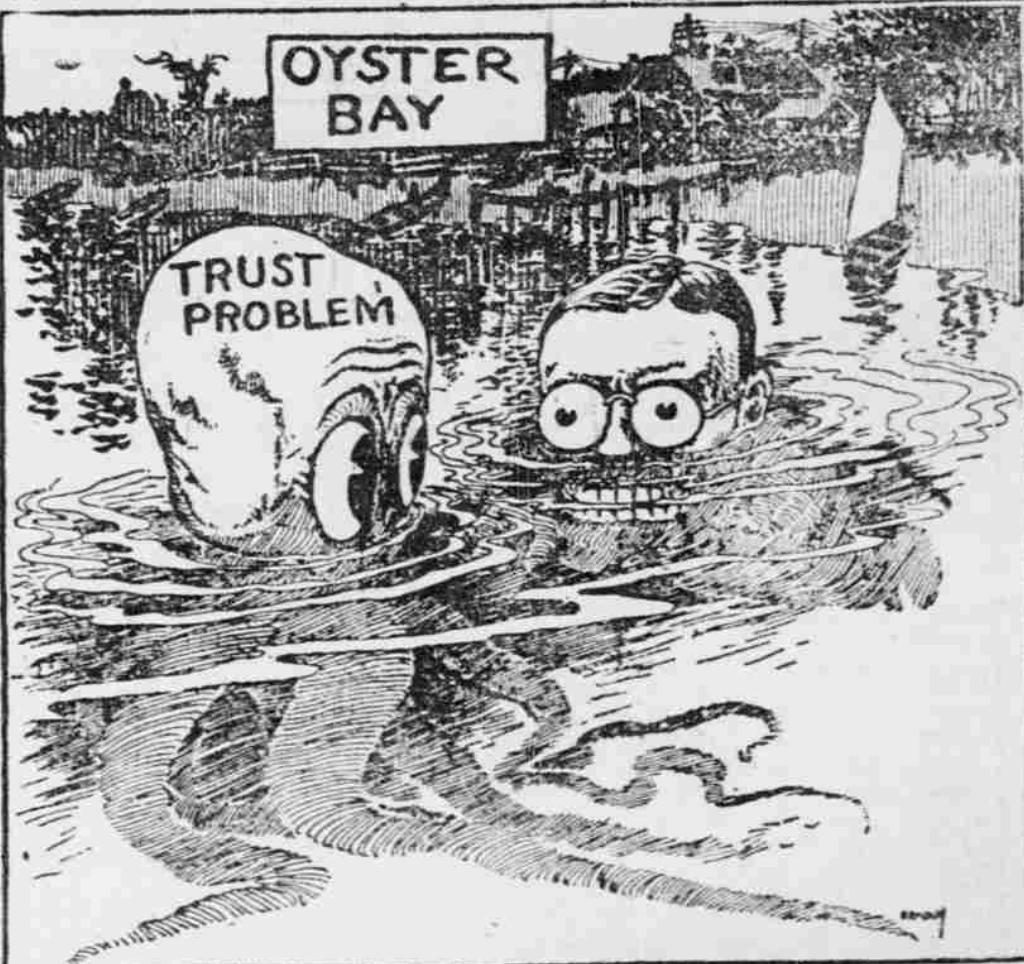
It was mentioned yesterday among leaders that as there may be present in the city at that time several senators of the United States who will compose the commission which is to investigate conditions here, there may be had an opportunity for an address from some of the Republican leaders from the mainland to add to the interest of the occasion.

Under the rules the meetings for organization of the new district committees will be held Friday evening, August 8th, and there is already a lining up of the forces which will expect to control the two committees, the

DEMOCRATS TALK OF A FUSION

Non-partisan nominees for both the legislature and Congress would, in all probability, meet with the endorsement of the Democrats. The suggestion was made at last night's meeting in Waverley Hall and was favorably received, and plans for the coming campaign, as far as the Democrats are concerned, will probably be in this direction. All that the Democrats feel that they could ask for is proper representation in the legislature, and on this basis, whether the non-partisan effort is with the Republicans or with the Hui Kuokoas, they will doubtless be ready to pledge their strength.

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THE OCTOPUS --Wh-what's that? Help!--The Chicago News.

mittees interested in the canvassing of the city, the executive and canvassing committees, would get together in the same place, San Antonio Hall, Wednesday evening for the purpose of considering plans for enlisting all Portuguese in the city in the movement the question being the districting of the city and the determining of the course to be followed. He called for expressions of opinion as to the holding of a mass meeting.

H. Correa opened the discussion saying that he thought, owing to the difficulty of getting out many of the Portuguese, it would be wisest to hold such a meeting in Lusitana Hall, as the most central place, on the afternoon of Sunday. This proposal was endorsed by M. A. Silva, and the Rev. Mr. Durao, who was expected to object, said that he considered anything which would help the people a work of the gospel and that he would be present at the meeting. A. Melin was the only objector and after some talking on motion of M. A. Silva, it was determined that the meeting should be held Sunday, August 17th. The meeting will be advertised and an attempt made to have a full meeting of the members of the colony.

The question of speeches in Portuguese was brought up and there was a long discussion some holding that the older men should in this matter follow the youngsters, and others wanting the influence of the elders to assist in the movement. It was decided that the executive committee should arrange for orators and that there should be some orations in the Portuguese. The business of the meeting concluded, M. A. Silva was called upon for remarks and said:

Mr. Chairman and Fellow Member: In my mind, the purpose for which this club was organized has been fully understood by our members and the community at large. We have thereby gained one point in making it so understood.

Now then, that we are aware of what is expected from us, the question arises: Are we the proper material to accomplish that purpose? (Yes, yes, from audience.)

I hear what I expected, and with you I claim that we are the equal of any handful of men who have in the past done great deeds from which their country and people have been greatly benefited.

Knowing this, and it being evident to us that our colony is in need of our services, are we to shrink or respond to this sacred duty?

Respond we must, it would be cowardly to do otherwise. The necessity of this organization is so great that we "the self-styled" flower of our colony, cannot honorably shut our eyes to the opportunity which is before us today. Let us then, as one, take advantage of it, resolve within ourselves to tramp down beneath our feet whatever obstacles may be put in our way, and without fear, let us not stop until we reach the very goal.

This club has been felt as a factor in the political field of this Territory, and at this very minute we are being watched very closely by men who long ago realized that the "Portuguese Colony" could be strong enough to turn the tide of politics; but they also know that we can not cut any figure as long as we are separated. Why, shouldn't we, then, have that "union" which has been lacking for the last 20 years?

Gentlemen, in that small word of five letters, "union," lies the secret of our success. Let us, then, strive for it, because it is our strength, it is our influence, it is our bread and salvation, and to us the first "Portuguese Political Club" of this Territory is given this great problem to solve. Are we competent?

Yes, I believe we are; but it remains to be seen. Therefore let us one and all prove it beyond a doubt.

Frank Andrade was called to the front and spoke at some length on the subject of unity. Union he said was the essential element if the club would acquire influence in the affairs of the government. He said that as units the members could have little influence but once let them come into a club and get themselves solidified and they would be listened to and given representation. He said petty jealousies in the past had prevented the colony having any influence but now the young men should see that there is something done which will lead to better things.

H. Correa said that the club was being watched closely by the members of the great parties as the influence of the young men was wanted. The real object of the getting together he said was to further the interests of the Portuguese people and every energy must be turned to that end. He spoke at length of local government and said the people should not be affected by the argument that taxes would be higher, for they must be ready to pay a few dollars more that they might have a voice in their government. He emphasized the necessity of sticking together.

M. A. Gonsalves was called upon but did not speak, saying he had the blues. There were six new members elected.

Yesterday's rain was reported general all over Oahu, though heaviest in Honolulu. The streets were flooded by the downpour, though no damage was done.

WHO GETS THE MONEY?

**Has Officer Right
To Keep
It.**

**JUDGE GEAR'S
QUEER DOCTRINE**

**Public Official Who Collects Extra
Fees Need Not Pay Them
to Territory.**

HAS a public official who performs services in addition to his statutory duties, during office hours, and collects a fee for the same a right to the possession of the money so obtained? The question arose yesterday in the discussion of the fire court fee proceeding, and Judge Gear held that any public official who does so collect money is entitled to put it in his own pocket and not turn it over to the Territory. The practice at present is the reverse of the doctrine of the second judge, and Attorney General Dole contends that a public official who does do things not required by statute, but while in the service of the Territory, is required to pay the money into the public treasury.

Treasurer Wright is among the officials who at present collects fees for services which he is not actually required to perform and these sums go into a fund designated as "realizations." There is no check upon such collections for any official, and the court suggested that the Treasurer might give a big luau some time from this fund and no one be the wiser.

"This government is woefully lacking in necessary statutes for carrying on its business," said the court, "there is a system now of officials trusting one another which ought not to be. The auditor and the treasurer haven't the proper checks and expend money from funds which should not be spent for that purpose. Only a little while ago, a representative was sent to Washington and his expenses paid out of some fund or other, for there wasn't an appropriation by the legislature dedicated to that purpose. There are other instances in which money is taken out of one fund and placed in another and this exchange of funds should not be allowed. If these actions were questioned in the courts there might be trouble. The whole fault is in the insufficiency of necessary statutes governing all these things specifically."

Mr. Dole suggested that it would be extremely difficult for the Treasurer or any other official to put these monies in his own pocket as was suggested by the court. Judge Gear replied that there was no statute requiring the performance of extra duties, and if this extra work was done, and compensation received, the Territory had no right to the money. There was no law by which the Territory had a right to make such charges and if they were made then some one was made to pay something which he was not required to do. Mr. Dole suggested that if the registrar for instance made a copy of a deed or something of the sort, which he was not required by law to do, he had a right to charge a fee for the service, whether expressly authorized by statute or no.

In this case, the court contended, he pocketed, as there is nothing in the statute authorizing the government to make such charge. The Attorney General argued that the work was done by the official during the time he was being paid by the government and consequently any monies so received should go into the Territorial Treasury. The court was not convinced by the argument, and held that the Territory did not have as much right to the money as did the official who did the work. As the discussion was entirely apart from the argument in the Fire Commission case the court's opinion did not have the usual judicial weight.

Moana Loses Manager.

The resignation of J. W. Allen of the Moana hotel, which was tendered in May, has been accepted. Mr. Allen will retire from the management the first of September. He will, however, remain in Honolulu, having several propositions under consideration.